

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1641-2010 (O&M)
Date of decision: 17.08.2015

Food Corporation of India

... Petitioner

Vs.

Sarabjit Singh and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Manav Bajaj, Advocate for
Mr. Sumeet Goel, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Present criminal revision petition, at the instance of complainant, is directed against the impugned judgment dated 25.09.2009 passed by learned Additional Sessions Judge, Fast Track Court (Adhoc), Tarn Taran, whereby appeal of the petitioner was dismissed and the impugned judgment of acquittal dated 29.09.2007 passed by learned Judicial Magistrate 1st Class, Tarn Taran, was upheld.

Brief facts of the case, as noticed by learned Additional Sessions Judge in para 2 of the judgment, are that the accused-respondents were put to trial by SHO PS Goindwal Sahib, for committing the offence under Sections 420/408/420 IPC. Briefly, the facts on the basis of the letter No.35691/T dated

25.09.1996 from the office of Food Corporation of India, 86, Rani Ka Bagh were that the respondents had misappropriated the paddy crop which had been issued to them during the year 1994-95. There had been proper acknowledgment. An agreement was also executed with the rice miller that out of the paddy stored in the mill premises, paddy issued to the rice mills but for this purpose the concerned miller has to get the release order from the FCI for milling purpose. Though the paddy remained in the joint custody, the same remained under the constructive custody of the miller. Some of the rice millers, as per the list, have dishonestly misappropriated the paddy without getting any release order from the FCI and have misappropriated the paddy as shown against each intentionally with a view to cause loss to the FCI and for their personal benefit and no release order was issued by the FCI for the release of the paddy. It was basically agreed between the miller and the FCI that the paddy would remain with the joint possession of both the parties but in the present case the lock and the keys of the paddy store in his mill premises were with the miller and not with the FCI. The miller without the consent and knowledge and without getting release order from the FCI had misappropriated paddy. The officials of the FCI approached the miller for enquiring the subject matter but they linger on the matter on one pretext or another without giving any reply. Thus, the said millers have flouted the agreement and have misappropriated the paddy and committed criminal offence.

As per statement sent by the Assistant Manager, FCI, showing the position of misappropriation of paddy crop 1994-95 by miller and latest position of the complaint lodged with the police station, date of lodging the

complaint. Latest position 1. Sh. Guru Arjan Dev Rice Mill, Fatehabad, S. Fine 210 MT 68 MT Police Station, Goindwal on 06.01.1996 FIR was not lodged by the police as no criminal offence was made out. 2. Chatrath Rice Mills, Fatehabad S. Fine Joint 209” common 347” dated 08.12.1996 civil suit may be filed as intimated by the SSP, Tarn Taran vide letter No.15027. 3. Sun-n-sand Industries S. Fine common 119” 25” common -do- 23/25.01.1996 No.15027 dated 01.04.1996. 4. Vijay Kumar and Co. Chohla Sahib, Fine 26.3” common 340” -do- Sarhall 13.03.1996. 5. Shakti Rice Mills Shahbajpur fine 1 96 police station Tarn Taran city 8/23/1/1996. On the basis of aforesaid circumstances and the directions issued by higher authorities, the matter was investigated by SI Gurbans Singh, ASI Milkha Singh, Inspector Amarjit Singh, Davinder Singh SI/SHO, SI Sukhdev Raj and ASI Raghbir Singh. During investigation, relatives of Sh. Guru Arjan Dev Rice Mills, Fatehabad were found guilty, so the accused were arrested. During the investigation, it was found that FCI had supplied 21598 bags of paddy weighing 14272 quintals 30 kg and 80 gms, 2426 bags of paddy fine weighting 1577 quintals and 75 kg, 6102 bags of super fine paddy weighing 780 quintals and 75 kg, 6102 bags of super fine paddy weighing 780 quintals 68 kg and 200 gms and 3080 bags of paddy common and paddy super fine weighing about 33 kg 200 gms to relatives of Sh. Guru Arjan Rice Mills but they did not make payment of the same to FCI. Statements of witnesses were recorded. After completion of the investigation, the challan was prepared and presented in the Court for trial.

The challan having been presented by the investigating agency, copy thereof along with documents attached therewith, was supplied to the

accused, as envisaged under Section 207 Cr.P.C. A prima facie case was found to be made out and accordingly, the accused were charge-sheeted. Accused pleaded not guilty and claimed trial.

In order to substantiate the charges against the accused, prosecution examined as many as six PWs, besides producing other relevant documentary evidence. On closure of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material available on record, was put to the accused. They denied all the allegations, pleaded false implication and claimed complete innocence. However, no defence evidence was produced by the accused.

After hearing the learned counsel for both the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has failed to bring home the guilt against the accused. Accordingly, the accused were acquitted of the charges framed against them, vide impugned judgment of acquittal dated 29.09.2007. Feeling aggrieved, petitioner filed the appeal which also came to be dismissed by learned Additional Sessions Judge, vide impugned judgment dated 25.09.2009. Hence this criminal revision petition.

Learned counsel for the petitioner submits that the both the learned Courts have miserably failed to appreciate true facts of the case as well as the relevant principles of law applicable to the facts of the case. He further submits that there was cogent and convincing evidence available on record, which was sufficient to record conviction of the accused persons-respondents. However, since both the learned Courts have failed to appreciate the evidence in correct perspective, the impugned judgments have resulted in

miscarriage of justice. In support of his contentions, learned counsel for the petitioner places reliance on a Full Bench judgment of this Court in **Tata Steel Ltd. Vs. Atma Tube Products Ltd. and others, decided on 18.03.2013 in CRM-A-790-MA-2010**. He prays for setting aside the impugned judgments, by allowing the present criminal petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, no interference is warranted at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare combined reading of both the impugned judgments would show that the learned Courts below have discussed, considered and appreciated each and every relevant aspect of the matter in detail and have also rightly appreciated the evidence in the correct perspective, before arriving at their judicious conclusions. Both the learned Courts have not been found to have committed any error of law. Having said that, this Court feels no hesitation to conclude that since both the impugned judgments are based on correct appreciation of the facts as well as the evidence available on record, the same deserve to be upheld.

Coming to the judgment relied upon by learned counsel for the petitioner, there is no dispute about the law laid down therein. However, on close perusal of the cited judgment, the same has not been found of any help to the petitioner, being distinguishable on facts. Further, it is the settled

proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one additional fact or circumstance can make a world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

It is the settled principle of law that wherever two views are possible, the view which goes in favour of the acquittal, deserves to be adopted by the Courts. It is not even the argued case on behalf of the petitioner that the view taken by the learned trial Court as well as by the learned Additional Sessions Judge was not one of the possible views. In this view of the matter, it can be safely concluded that the impugned judgments of acquittal do not suffer from any illegality and the same deserve to be upheld, for this reason also.

The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in the case of **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638.** The relevant observations made by the Hon'ble Supreme Court in para Nos.39, 40 and 41 in the case of Arulvelu (supra) read as under:

“In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles

emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

40. This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009 (11) SCALE 699 again examined judgments of this Court and laid

down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."

41. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

The law laid down by the Hon'ble Supreme Court in **Arulevlu's** case (supra) has also been followed by a Division Bench of this Court in the case of **State of Haryana v. Aman Kumar and another 2012 (3) RCR (Crl.) 330** and judgment dated 2.11.2012 passed by this Court in **CRM-A-284-MA-2011 (Baljeet Singh v. State of Punjab and others)**.

During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error of patent illegality in either of the impugned judgments so as to convince this Court to take a different view than the one taken by both the learned Courts below. Under these circumstances, it

is unhesitatingly held that since none of the impugned judgments has been found suffering from any patent illegality, both the impugned judgments deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant criminal revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

17.08.2015
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